



CITY COUNCIL

Public Safety Committee

Monday, April 16, 2007
Agenda
5:00 p.m.

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|-------------|--|------------------|
| I. | Review of Revised Bottle Club Ordinance | 5:00 p.m. |
| II. | Park Safety Program | 6:00 p.m. |
| III. | Sidewalk Cafe Ordinance | 6:30 p.m. |
| IV. | Sidewalk Sale Ordinance | |

Upcoming Topics

Property Settlement Review (Feb)
Codes Enforcement (Mar)
Trash Collection (Mar)
Anti Litter Program (Mar)
Renter Licensing & Tax (April)
Fireworks Ordinance – last discussed 8-21 MM to research and provides draft (April)
Update on Citizens Inspection Program (May)
Update on enforcement of both curfew ordinances (May)
Update on enforcement of Disruptive Tenant Ord and Appeal Board (June)
Update on Norfolk Southern codes compliance (June)
Progress report – Demolition Project (July)
Right of Way (ROW) Ordinance (July)

DRAFT BILL NO. _____-2007
AN ORDINANCE

AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY AMENDING CHAPTER 6 CONDUCT, PART 1 ALCOHOLIC BEVERAGES BY ESTABLISHING RULES AND REGULATIONS FOR BOTTLE CLUBS AND ADDING THE PERMIT FEE AND FINE TO THE CITY OF READING FEE SCHEDULE.

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the City of Reading Codified Ordinances amending Chapter 6 Conduct, Part 1 Alcoholic Beverages by establishing rules and regulations for Bottle Clubs as follows:

§ 6-101. This part shall apply to Bottle Clubs within the City of Reading that are not licensed by the Pennsylvania Liquor Control Board.

§ 6-102. Purpose

The Council of the City of Reading hereby declares that the purpose of the within Rules and Regulations is to regulate Bottle Clubs to preserve the health, safety and character of neighborhoods and to protect the rights of its citizens to the quiet enjoyment of the same.

§ 6-103 Definitions

Bottle Club - a place of assembly or any other use defined in this Ordinance, other than a dwelling unit, including but not limited to, taverns, clubs, and social buildings, that is not licensed by the Pennsylvania Liquor Control Board, in which no alcoholic beverages are sold, but which permits the consumption of such beverages by patrons or guests when such beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the establishment by the patrons or guests assembling there. This term includes but is not limited to those organizations commonly known as “social clubs.”

Alcoholic beverages - any and all beverages, including malt beverages, which contain alcohol, liquor or such other intoxicating substances as are further defined in the Pennsylvania Liquor Code, 47 P.S. Section 1-101 et seq.

Operate - any person, entity or establishment that:

- A. Controls or causes to be controlled through agents or employees any bottle club.
- B. Conducts or manages a bottle club.
- C. Owns, leases or subleases any area used as a bottle club.

(Ord. 11-1998, 4/27/1998, §1)

Residence - a building or structure wholly or partially used for living, sleeping, eating, cooking and sanitation by human occupants.

Residential District - those classes of residential districts as specified in the City of Reading Zoning Ordinance.

§ 6-104 Unlawful Activities

In any district in which Bottle Clubs are otherwise permitted, it shall be unlawful for any person or persons who own, operate, lease, manage or control a Bottle Club to:

- (a) Remain open and/or to transact business between the hours of 12:00 a.m. midnight and 11:00 a.m., prevailing time. In all cases, the premises must be vacated within fifteen (15) minutes after the required closing time.
- (b) Allow members to rent or occupy the club unrestricted. Bottle and social clubs will adhere to the following restrictions when allowing members to hold functions in the club. No event shall exceed six (6) hours in length, nor to exceed one (1) rental in a twenty-four (24) hour period, nor to occur between the hours of 12:00 a.m. midnight and 11:00 a.m. by individuals or an organization for the purpose of a private party in which alcoholic beverages are carried onto the premises.
- (c) Conduct activities to which this Ordinance applies without possessing a valid Club permit as specified herein.
- (d) Any structure of a Bottle Club shall not be located within three hundred (300') feet from the nearest property line of any residential district, church, school, other institution of learning or education, hospital, library, park, and /or playground. Bottle Clubs operating under the City's existing laws will be exempted from Section 6-105.d until the property or Club is sold or transferred to another party or legal entity.

§ 6-105 Club Requirements

Any and all Bottle Clubs, as that term is defined, shall comply with the following requirements:

- (a) Obtain and carry general liability coverage in the minimum amount of, \$1,000,000 per occurrence, proof of which shall be filed with the Codes Enforcement Office of the City of Reading, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and
- (b) Possess a valid certificate of occupancy issued by the Pennsylvania Department of Labor and Industry and the City of Reading and prominently display said certificate as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and
- (c) Obtain a valid business privilege and mercantile tax license from the City of Reading and prominently display said license as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and
- (d) Obtain a City of Reading Zoning Permit and all other valid City of Reading permits and prominently display said permit as required, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office; and
- (e) Obtain a valid Bottle Club permit pursuant to this Article and prominently display said permit as required; and
- (f) Conspicuously post the hours of operation at the business premises such that patrons are sufficiently apprised of same; and

(g) Clubs may not store any alcohol of any type on their premises between the hours of 12:00 a.m. and 11:00 a.m.; and

(h) The owner and or operator of the Bottle Club must provide proof that they are a resident of Berks County. If the owner and or operator is not a Berks County resident they must designate the name, mailing address and telephone number of a responsible agent, who has the oversight of the buildings operations and is authorized to accept service on behalf of said property owner; and

(i) The owner and or operator of the Bottle Club may not have been convicted of a crime classified as a felony offense under the laws of the Commonwealth of Pennsylvania or the United States, or be convicted of any comparable crime under the laws of any other state in the United States.

(j) Have a valid and current trash collection contract with a licensed hauler, proof of which shall be filed annually when the permit is renewed with the Codes Enforcement Office.

§ 6-106 Club Permit

(a) Any person or persons desiring to operate or continue to operate a Bottle Club shall file with the Codes Enforcement Office of the City of Reading an application for a Bottle Club permit, which application shall include the following information: the name and address of the Bottle Club, a statement whether the business premises is leased or owned by the Bottle Club, the name and address of the lessor of the business premises, if applicable, the nature of the ownership of the Bottle Club, i.e. corporation, partnership, joint venture, association, the names and addresses of the officers and/or financial interest in the Bottle Club. Also supply the name, addresses and phone number of any and all managers and club officer who will be responsible for the operation of the club during any time that it is open or at special events and rentals. Failure to keep the city informed of current information will be cause to revoke the permit.

(b) The Codes Enforcement Office shall determine whether the Bottle Club fully and completely complies with the provisions and requirements of this Ordinance within twenty (20) days following the date on which application is received. If the Codes Enforcement Office determines that the applicant fully and completely complies with the provisions hereof, the office shall issue a Bottle Club permit; if the Codes Enforcement Office determines that the applicant does not fully and completely comply with the provisions hereof, the office shall deny the issuance of a Bottle Club permit and shall furnish written evidence of the same to the applicant together with the reason(s) for denial.

(c) The Club shall pay an administrative fee of two hundred and fifty dollars (\$250.00) for a Bottle Club permit and two hundred and fifty dollars (\$250.00) for each renewal thereof on a yearly basis. Said Bottle Club permit shall be effective for a period of one year following the date of issuance; provided, in the event the Bottle. Club fails to fully and completely comply with the provisions hereof or is convicted of any unlawful activities during the term of the Bottle Club permit so issued, the City of Reading shall have the authority to revoke the Bottle Club permit due to Bottle Club's lack of compliance.

§6-107. Authority of Police Officer.

Any police officer is authorized to arrest with or without warrant, any person or persons violating any provision of this Part. (Ord. 11-1998, 4/27/1998, §1)

§ 6-108 Penalty

(a) Any person, persons, or entity violating the provisions of this Ordinance shall, upon conviction thereof, be subject to a fine of Three Hundred Dollars (\$300.00) to One Thousand Dollars (\$1,000.00) plus costs for each day of such violation and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days, and any and all other remedies available in accordance with the Codified Ordinances of the City of Reading and the laws of the Commonwealth of Pennsylvania.

(b) The unlawful activities specified herein shall constitute separate and distinct offenses for each and every day in which said activities are conducted.

(c) In addition to any monetary penalties involved, the City of Reading shall revoke the Club Permit required upon conviction of any unlawful activities and any building, occupancy, zoning or other similar permits previously issued by the City for the premises on which such Bottle Club has been operated.

(d) In the event of any of the unlawful activities specified herein are conducted by or in the name of a corporation, partnership, joint venture, trust, firm or association, in addition to entity liability, the officers, agents or principals of said corporation, partnership, joint venture, trust, firm or association shall be deemed in violation, as well as the person or persons engaged in the unlawful activity.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

A N O R D I N A N C E

**AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY ADDING
PART 15 SIDEWALK CAFES TO CHAPTER 10 HEALTH AND SAFETY**

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Amending the Codified Ordinances by adding Part 15 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2007

President of Council

Attest:

City Clerk

Submitted to Mayor: _____
Date: _____

Received by the Mayor's Office: _____
Date: _____

Approved by Mayor: _____
Date: _____

Vetoed by Mayor: _____
Date: _____

EXHIBIT A

PART 15

SIDEWALK SALES & SIDEWALK CAFES

§10-1500. Declaration of Purpose. The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Cafes due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

§10-1501. Sidewalk Cafes. No person shall engage in the operation of a sidewalk cafe, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Café Permit enables a restaurant to have outdoor dining, consistent with the terms herein, between April 15th and October 15th of each calendar year.

§10-1502. Definitions. For the purpose of this article, the following terms shall have the following meanings:

ABUTTING PROPERTY -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

COMMERCIAL CORE - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

CITY ENGINEER -- The Director of Public Works or his authorized representative.

HEALTH OFFICER -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

OWNER -- Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

PEDESTRIAN WALKWAY -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

PERSON -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

PUBLIC SERVICE FACILITY -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

RESTAURANT -- A food service establishment where food is purchased and served in individual portions for consumption on the premises. This term shall not include an establishment which operates exclusively as a caterer, a commissary, a food processing establishment, a mobile food unit, a retail food store or a temporary food service establishment.

SIDEWALK -- Any paved area between the curbline and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK CAFE -- An outdoor dining area operated by a restaurant, generating 65% of its annual revenue from food sales, located on a sidewalk area or other designated public place and containing removable tables, chairs, plants and related appurtenances, which is not located on or does not encroach upon the pedestrian walkway as established under the provisions of this article. It shall not be enclosed by fixed walls and shall be open to the air, except that it may have a canopy. It may but is not required to abut its sponsoring restaurant.

STREET RIGHT-OF-WAY -- The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

§10-1503. Sidewalk Cafe - Issuance of Permit; Display.

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any food, goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with the City Codes Enforcement Office and the Tax Division.

§10-1504. Sidewalk Cafes – Issuance of Permit, Display

The Codes Enforcement Office is hereby authorized to grant revocable licenses for the use of the sidewalks for sidewalk cafes in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit approved by the City Council. When the Codes Enforcement Office has approved the issuance of a sidewalk cafe permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk café activities and shall be exhibited for inspection for any person.

A. The applicant shall comply with all of the terms and conditions for a sidewalk display license, set forth in this Part, including, without limitation, the indemnification, and insurance requirements.

B. The applicant shall delineate the cafe area with a removable physical barrier separating patrons from pedestrian traffic. The delineation and layout of the cafe area shall be consistent with the site plan submitted by the applicant.

C. No sidewalk cafe may be operated except:

(1) As an accessory to a restaurant or retail food store lawfully operating on the first floor of the premise.

(2) On the sidewalk in front of the principal place of business of such entity.

(3) By the entity which operates the restaurant or retail food store.

D. No sidewalk cafe shall operate after 10:15 p.m. or when the entity with which it is associated is not open to the public.

E. Furnishings of a sidewalk cafe shall consist solely of readily removable umbrellas, covers, railings, tables, chairs, planters containing live plants, waste receptacles and accessories. Furnishings may not be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure. All furnishings shall be removed from the sidewalk and stored in an approved manner when the sidewalk cafe is not in operation.

F. All food must be prepared within the existing restaurant or retail food store upon which the cafe license has been granted.

G. The applicant shall be responsible for obtaining, maintaining in full force and effect and complying with the terms and conditions of any permit which may be required under any other law or regulation for the serving of food or beverages, including alcoholic beverages, at a sidewalk cafe.

H. Sidewalk cafes, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury.

I. The applicant shall maintain a sufficient number of receptacles for the disposal of waste, properly covered to prevent infestation by insects. Such receptacles shall be emptied as often as is necessary, but in no event less than once per day.

J. All sidewalk cafes and attendant facilities shall be inspected by the Health Officer, or his designee and the Public Works Director, or his designee prior to the issuance of a sidewalk café permit.

K. Acceptance of a sidewalk cafe permit is an express acknowledgment and consent to the terms and restrictions set by this article and the Health Officer. The grant and usage of such license is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.

L. As an express condition of the acceptance of a license hereunder, the recipient agrees to police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.

§10-1505. Permitting for Sidewalk Cafes Outside the Commercial Core.

Applications for sidewalk cafes outside the Commercial Core zoning district shall be submitted to the Codes Enforcement Office in accordance with the regulations contained herein. Such applications shall be forwarded to City Council for approval.

§10-1506. Sidewalk Café Design Standards & Regulations.

All sidewalk cafes shall comply with the following standards:

- A. A sidewalk cafe shall have a pedestrian walkway with a clear unobstructed width of six feet between the sidewalk cafe and any obstacle (tree, pole, post, sign, planting area, bus shelter, etc.). The pedestrian walkway shall be provided with an unobstructed height of seven feet between the ground plane and an overhead obstacle (tree branch, overhead sign, awning, etc.).
- B. No sidewalk cafe may be permanently located within the sidewalk area by means of raised deck platform, fence, walls or other structures or enclosed by fixed walls, except that sidewalk cafe boundaries may be delineated by the use of temporary barriers such as balustrades, cordons or railings. Any such temporary barriers must be easily removed and three feet or less in height above the sidewalk. Under no circumstances shall temporary barriers as authorized hereunder be allowed in the identified pedestrian walkway, nor shall a temporary barrier be affixed to the sidewalk or to any permanent structure, except that it may be attached by removable clips or devices approved in advance by the City Engineer.
- C. The City Engineer may approve temporary platforms or similar structures for the sole purpose of leveling sidewalk cafe areas on which sidewalk cafes are located.
- D. No sidewalk cafe shall be situated:
 - (1) Within six feet of any pedestrian crossing as defined in City of Reading Codified Ordinances;
 - (2) Within five feet along the street line of any fire hydrant or other emergency facility;
 - (3) Within five feet of any driveway;
 - (4) Within two feet of any curblin;
 - (5) Within 10 feet to the rear of any sign marking a designated bus stop;
 - (6) In a manner which restricts sight easements of vehicular traffic; or
 - (7) In a manner which obstructs traffic control devices or traffic signs.
- E. All sidewalk cafes shall be open to the air.
- F. Canopies and awnings may be permitted in accordance with specifications, as delineated by the City Building Code and the City Zoning Code which relate to height, placement, interference with pedestrian passage and traffic sight easements.
- G. Sidewalk cafes shall in no way obstruct the ingress to or the egress from any building or business.
- H. All sidewalk cafes and their attendant facilities or improvements shall comply with clearances required for structures in relation to utility lines as provided in the City Building Code.
- I. No sidewalk cafe shall be located on the sidewalk between the building facade and a bus stop.
- J. No portion of a sidewalk cafe or its facilities, appurtenances, planters, shrubs, tables, chairs or other materials shall be permitted in the pedestrian walkway as defined in this article.

- K. Sidewalk cafes shall provide and maintain adequate lighting in and around the pedestrian walkway so as to allow sidewalk users to observe and avoid obstructions.
- L. Sidewalk cafes shall not obstruct access to hydrants, streetlights, telephones, mailboxes, transit stops or any other public service facility on the sidewalk area or street.
- M. No signs shall be hung or attached to any portion of the sidewalk cafe, except those signs that are in compliance with provisions of the City Zoning Ordinance.
- N. A sidewalk cafe may be expanded to an abutting property with the written permission of that abutting property owner.
- O. In the event that the proposed sidewalk cafe is not in front of a restaurant or abutting property, the applicant must provide written permission from the owner of the property and reasonable procedures that a sidewalk cafe can be operated in a noncontiguous location.

§10-1507. Sidewalk Cafe Regulations.

A sidewalk cafe authorized and operated pursuant to this article shall:

- A. Comply with all plans submitted to and approved by the Codes Enforcement Office.
- B. Serve alcoholic beverages only in conformance with Pennsylvania Liquor Control Board requirements.
- C. Operate only during the same hours of business as the sponsoring restaurant. All patrons must be vacated from the sidewalk cafe and all utensils, containers or any other serving materials used in the operation of the sidewalk cafe or within the area used by the sidewalk cafe shall be removed from the sidewalk cafe area within one hour of closing; provided, however, that any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe may be allowed to remain on the sidewalk area if specifically permitted in the Health Officer's approval of the sidewalk cafe plans as described under 6-1009 above.
- D. Remove all sidewalk cafe structures by October 30, and not install prior to April 1, in any year for which a license is granted.
 - (1) In the event that favorable weather conditions should prevail, a sidewalk cafe may temporarily reopen on a daily basis during the time period set forth in Subsection D above. All tables, chairs and other materials must be removed every day by sundown.
- E. Use no food serving or food service equipment to hold, store, heat, warm, cool, chill or otherwise keep food to be served outside of the sponsoring restaurant for use in or by a sidewalk cafe.
- F. Serve no food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table.
 - (1) If the sidewalk cafe is located adjacent to the sponsoring restaurant, in lieu of Subsection F above, the following is allowed:
 - (a) Self-service by patrons, without table service; or
 - (b) Facilities for standing instead of sitting.
- G. Play no music, from whatever source (acoustical, electric, or other) on the premises outdoors, except in conformance within Chapter 6 Conduct of the Codified Ordinances, Noise.
- H. Police for trash and debris an area extending 15 feet in each direction from the outermost portion or boundary of the sidewalk cafe at least daily.

I. Comply with all other provisions of the Codified Ordinances of the City of Reading.

§10-1508. Sidewalk Café Permit Fees.

A. The permit fee for a sidewalk cafe shall be \$500 for the calendar year.

B. There shall be no prorating or rebating of license fees.

§10-1509. Sidewalk Sale and Sidewalk Café Application Requirements.

Each applicant for a license under this article shall submit three copies of his application and plans for the sidewalk sale and/or sidewalk cafe to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 days prior to the intended start date. Applications for sidewalk sale and/or sidewalk cafe permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the sidewalk cafe, of the owner of the underlying freehold and/or abutting property owner if not the same person and:
 - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
 - (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk cafe.
- E. The name under which the sidewalk sale or sidewalk cafe will be operated.
- F. The street address and the City food establishment license number of the restaurant operating and servicing the sidewalk cafe.
- G. A copy of the current City Business License.
- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
 - (1) The entirety of the sidewalk abutting the property of the owner;
 - (2) The frontage of the property proposed for the sidewalk cafe;
 - (3) All abutting properties;
 - (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
 - (5) Any bus stops within 25 feet on either side of the proposed sidewalk cafe area; and
 - (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk cafe site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk cafe.

- H. The seating capacity of the proposed sidewalk cafe.
- I. A copy or copies of the certificate or certificates of insurance required to be provided.
- J. If the serving of alcoholic beverages is proposed, a copy of the current state liquor license that will allow or can be amended to allow applicant to serve alcoholic beverages in the sidewalk cafe.

§10-1510. Sidewalk Café - Review of Application.

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
 - (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk cafe. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
 - (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk café and or sidewalk sale is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk cafe's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk cafe approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.
 - (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk café and/or sidewalk sale that, in his sole judgment, protects the health, safety and welfare of the public.

§10-1511. Conditions for Issuance of License.

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
 - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.
 - (2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.
 - (3) If applicable, proof that the applicant has a state liquor license authorizing him to serve

alcoholic beverages in his/her sidewalk cafe.

- B. Sidewalk cafe and sidewalk sales licenses are not transferable. Changes in ownership/operation require reapplication for a license.

§10-1512. Removal of Improvements.

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk cafe for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the outdoor season, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill for removal and any fines or fees are paid in full.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

§10-1513. License Renewal.

A sidewalk cafe license may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services Bureau of Police. Each agency shall provide to the Health Officer copies of any inspection results, complaints filed and citations issued concerning the sidewalk cafe under consideration. The renewal fee for the renewed permit license shall be as stipulated in §6-1011 above.

§10-1514. Written Notice of Violations; Suspension of Permit.

Upon finding by the Health Officer that an applicant has violated any provisions of this article, the Health Officer shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Health Officer may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Health Officer may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Health Officer shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

§10-1515. Violations and penalties; effect on eligibility for license.

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be collected as other fines and costs are by law collectible, or imprisoned for not more than 90

- days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his license suspended for one full year and shall not be eligible for another license until the expiration of one full year.
 - C. Any person who fails to remove a sidewalk structure by November 15, as provided for in § 6-1015, shall not be eligible for a license in any following year.
 - D. Failure to observe any of the conditions set out herein is grounds for revocation of a license. Prior to such revocation, the Health Officer shall give 10 days' written notice to the licensee of his violation of or his failure to observe a general condition as set out above. If the licensee requests a hearing prior to the expiration of that ten-day notice period, the Board of Health shall hold a hearing to determine if the license should be revoked. The licensee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to the City Council. If the licensee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a license granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk cafe shall be immediately removed from the sidewalk.
 - E. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

§10-1516. Determination on Application.

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within seven days of its complete submission.

§10-1517. Reservation of Rights.

Neither the adoption of this article nor the granting of any license pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

§10-1518. Penalties for Offenses

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.

A N O R D I N A N C E

**AN ORDINANCE AMENDING THE CITY OF READING CODIFIED ORDINANCES BY ADDING
PART 16 SIDEWALK SALES TO CHAPTER 10 HEALTH AND SAFETY**

THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Amending the Codified Ordinances by adding Part 16 Sidewalk Cafes to Chapter 10 Health and Safety as attached in Exhibit A.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted _____, 2007

President of Council

Attest:

City Clerk

Submitted to Mayor: _____

Date: _____

Received by the Mayor's Office: _____

Date: _____

Approved by Mayor: _____

Date: _____

Vetoed by Mayor: _____

Date: _____

Exhibit A

SIDEWALK SALES

§10-1600. Declaration of Purpose. The City of Reading City Council encourages an attractive, functional and economically vital community and shopping areas that are safe and pleasant environments to live near and to do business within. Council recognizes that commercial development is a major identifying feature in a community, offering impressions to residents and visitors alike of the quality of life available. It is Council's intent to encourage commercial growth that contributes to a vibrant and attractive community. As the current Code does not allow Sidewalk Sales due to public health and safety concerns, Council believes that these activities can greatly contribute to a pedestrian friendly community if they conform to specific public health, and safety requirements defined herein.

§10-1601. Sidewalk Sales and Displays; Sidewalk Cafes. No person shall engage in the selling or display for sale of merchandise of any kind on, over or upon any sidewalk, without first applying for and obtaining a permit from the City of Reading Codes Enforcement Office and then operating within the terms and conditions of all applicable City ordinances. The Sidewalk Sale Permit enables the person or business to operate 52 sidewalk sales per calendar year.

§10-1602. Definitions. For the purpose of this article, the following terms shall have the following meanings:

ABUTTING PROPERTY -- Property contiguous to a public street right-of-way on which a sidewalk cafe will be operated under the terms of this article.

CITY ENGINEER -- The Director of Public Works or his authorized representative.

COMMERCIAL CORE - is the zoning district defined as the downtown center for government services, offices, shopping, hotels, entertainment and cultural activity.

HEALTH OFFICER -- The Health Officer of the City of Reading Codes Enforcement Office or his authorized representative

OWNER -- Includes any owner of fee simple title, part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole of the land contiguous to the street right-of-way on which a sidewalk cafe is to be operated under the authority of this article.

PEDESTRIAN WALKWAY -- That portion of a sidewalk area which is free of any obstruction, fixture or appurtenance and is used for pedestrian travel.

PERSON -- Includes a partnership, corporation, association, trust, estate or other legally recognized entity, as well as an individual.

PUBLIC SERVICE FACILITY -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

SIDEWALK -- Any paved area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK SALE - retail or wholesale selling of merchandise using racks, table or free-standing merchandise outside and/or adjacent to buildings and structures, and includes sales in areas such as sidewalks, walkways and parking lots. Sidewalk sales DO NOT include the sale and consumption of food and drink in open-air, cafe-style seating with tables and chairs.

STREET RIGHT-OF-WAY -- The entire right-of-way of a public highway, public alley or public road, including the designated sidewalk areas

§10-1603. Sidewalk Sale - Issuance of Permit; Display.

It shall be unlawful for any person, firm, corporation, transient merchant, church, club, charitable institution, hawker or peddler to vend, sell or dispose of or offer to vend, sell, dispose of or display, any goods, wares, merchandise, produce or vegetables on any public walk, street, alley or anywhere within the City of Reading without registering with and receiving a permit from the City Codes Enforcement Office.

The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalks for sidewalk sales in the Commercial Core Zoning District upon the following terms and conditions. Registration shall be on a permit approved by the City Council. When the Codes Enforcement Office has approved the issuance of a sidewalk sales permit, the applicant shall be issued a permit. The permit shall contain the information required on the application, the expiration date, and one of the photographs submitted with the application. The permit shall be carried by the applicant at all times when engaged in sidewalk sales and shall be exhibited for inspection to any person approached for purposes of sidewalk sales.

§10-1604. Permitting for Sidewalk Sales Outside the Commercial Core.

Applications for sidewalk cafes outside the Commercial Core zoning district shall be submitted to the Codes Enforcement Office in accordance with the regulations contained herein. Such applications shall be forwarded to City Council for approval.

§10-1605. Sidewalk Sale Prohibited Conduct. No vendor or person shall exhibit, display, offer for sale or sell any indoor furniture, appliances, mattresses or similar wares, or merchandise or place or allow any to stand or remain on the sidewalks in the City of Reading, unless they are set out for trash collection in accordance with the zoned trash collection schedule.

§10-1606. Sidewalk Sale Permit Term and Fees.

- A. The term of each sidewalk sale permit shall be specified on the license which is issued and shall not exceed 52 events per year.
- B. The permit fee to be charged is \$1000 per year.
- C. There shall be no prorating or rebate of the annual permit fee.

§10-1607. Sidewalk Sale Display Standards. The Codes Enforcement Office is hereby authorized to grant revocable permits for the use of the sidewalk for the display for sale of merchandise, flowers, floral arrangements and ornamental shrubbery not prohibited herein upon the following terms and conditions:

- A. No more than 52 sidewalk sales can occur during each calendar year.
- B. The permit and regulated activity shall be valid only during a single calendar year
- C. The permitted activity shall be conducted only as an accessory to a business establishment lawfully operating on the first floor of the premises, on the sidewalk in front of the principal place of business of such establishment and by the entity which operates such establishment. All sales shall be conducted within such establishment. No cash register or other facility for the exchange of currency or otherwise receiving payment for goods and services shall be permitted on the sidewalk.
- D. The applicant shall have the consent of the owner and lessee, if any, of the premises in front of which the licensed activity is to be conducted and the consent of each abutting property owner.
- E. There shall be no less than eight feet from the curbline to the front of the nearest structure.
- F. No sidewalk display shall be nearer than three feet zero inches to the curb, except that if the sidewalk is nine feet zero inches or more in width, then the distance from the curb shall be not less than 1/3 of the width of the sidewalk with a maximum of two rows.
- G. The applicant shall at all times maintain free and clear from all obstruction an aisle not less than three feet in width providing access to any establishment fronting on said sidewalk.
- H. No permanent structure may be affixed to the sidewalk or any building. The applicant shall be responsible for any damage caused to any sidewalk or public property.
- I. The sidewalk use shall not interfere with access to any public service facility, create a nuisance or fire hazard.
- J. At least one trash receptacle shall be provided by the business or person and the premise shall be kept letter free.
- K. No outdoor lighting or live or mechanical music shall be permitted.
- L. The sidewalk display shall be permitted only during the hours the business is open to the public or between the hours of 9 a.m. and 5 p.m..
- M. The applicant shall agree to indemnify and save harmless the City of Reading, its officers, agents, attorneys and employees from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the sidewalk use.
- N. The applicant shall obtain and maintain in full force and effect throughout the term of the license a policy of general liability insurance, which such policy shall name the City of Reading, its officers, agents, attorneys and employees as additional insured, have a combined single limit of not less the \$1,000,000 and contain a provision prohibiting its cancellation except upon 20 days notice to the City of Reading. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the license, a certificate evidencing the requisite insurance.
- O. The applicant shall file with the Codes Enforcement Office, prior to the issuance of the permit, the permit fee as set forth herein.
- P. The permit fee must be made at time of application.

Q. Any other conditions required or prescribed by the Codes Enforcement Office shall be reasonable and necessary to protect the health, welfare and safety of the public, including the denial of the application.

R. The owner/operator must submit with the application the name and street address of the owner of the abutting properties if not the same person along with:

- (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
- (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.

§10-1608. Special Sidewalk Sales. Anything in this article to the contrary notwithstanding, the City of Reading Codes Enforcement Office may permit the selling and display for sale of merchandise on, over or upon the sidewalk at any location within the City for a period not to exceed seven days in conjunction with any organized sidewalk sales days open to all retail merchants within the a specific neighborhood or City block, as long as the affected merchants comply with the other terms of this ordinance and other applicable City ordinances.

§6-1012. Sidewalk Sale Application Requirements.

Each applicant for a license under this article shall submit three copies of his application and plans for the sidewalk sale to the Codes Enforcement Office, who shall issue a permit upon compliance with the terms and conditions of this article. Application must be made within 14 days prior to the intended start date. Applications for sidewalk sale permits shall include the following:

- A. The name and street address of the applicant.
- B. The name and street address of the owner of the business and owner of the underlying freehold and/or abutting property owner if not the same person and:
 - (1) A description of the owner of the abutting property, if other than a natural person, including the legal status (corporation, partnership, etc.) and a general description of the type(s) of business operated on the abutting property.
 - (2) Written authority in the form of a power of attorney from the owner to submit the application if the applicant is not the owner of the abutting property.
- C. The name and street address of the registered agent for the service of process, if the applicant represents a corporation; or the names and street addresses of the officers or partners, if the applicant represents an association, partnership or other entity.
- D. The name and street address of the operator, manager or other person responsible for the operation of the sidewalk sale.
- E. The name under which the sidewalk sale will be operated.
- F. A copy of the current City Business License and Zoning Permit
- G. A site plan drawn to a scale of 1/2 inch equals one foot, showing:
 - (1) The entirety of the sidewalk abutting the property of the owner;
 - (2) The frontage of the property proposed for the sidewalk sale;
 - (3) All abutting properties;

- (4) All existing sidewalk features, including but not limited to trees, utility poles, sign poles, fire hydrants, permanent litter receptacles, telephone booths, news vending racks and mailboxes;
- (5) Any bus stops within 25 feet on either side of the proposed sidewalk sale area; and
- (6) Detailed drawings of legible proportions showing the limits of the proposed sidewalk sale site, the design dimension and proposed location of all proposed temporary structures (i.e., canopies, umbrellas, planters, landscaping, tables, chairs, all exterior lighting, electrical outlets, etc.), the proposed pedestrian walkway and the side and front elevations of the proposed sidewalk sale area.

H. A copy or copies of the certificate or certificates of insurance required to be provided.

§10-1613. Sidewalk Sale - Review of Application.

- A. Before any permit is issued pursuant to this article, the plans submitted to the Codes Enforcement Office pursuant to this article shall be referred to and approved by the Public Works Director, Reading Police Department and Department of Fire and Rescue Services.
- B. The Codes Enforcement Office shall determine if the applicant has:
 - (1) Obtained the approval of the Public Works Director and Building Official for any railing, flooring or other support or enclosure used in the assembly, operation or enclosure of the sidewalk sale. No such railing, flooring or other support or enclosure shall be considered an erection of, addition to or a structural alteration of a building or structure under applicable City Building Code unless such railing, flooring or other support or enclosure is permanently attached to such building or structure.
 - (2) Obtained the approval of the Historical Architectural Review Board (HARB) if the sidewalk sale is located within any area designated as part of an historic district and if the applicant proposes any facilities which are under the jurisdiction of the HARB. The HARB shall use the review criteria for such plans relating to a sidewalk sale's specific location, size and structure, for its compatibility of scale, design and alteration in the plans for a sidewalk sale approved by the HARB requires reapproval from the HARB. Once approval is granted by the HARB, the approved plans are valid and do not require annual reapproval. The HARB shall only review applications which have the written approval from the Public Works Director as specified herein.
 - (3) Complied with all rules, regulations and specifications of this article.
- C. The Codes Enforcement Office may impose any other restriction on the location, size or design of the sidewalk sale that, in his sole judgment, protects the health, safety and welfare of the public.

§10-1614. Conditions for Issuance of Permit.

- A. Upon approval by the Codes Enforcement Office of the plans submitted by the applicant and upon the applicant furnishing to the City of Reading the following, the Codes Enforcement Office shall issue a permit, valid through the end of the calendar year:
 - (1) A hold-harmless agreement executed by the applicant and indemnifying the City against loss, including costs and expenses, resulting from injury to person or property as a direct or indirect result of the operation of the sidewalk cafe. Said hold-harmless agreement shall be subject to the approval of the City Solicitor.

(2) Proof of liability insurance in the amount of \$100,000 per individual and \$300,000 per occurrence.

B. Sidewalk sales permits are not transferable. Changes in ownership/operation require reapplication for a permit.

§10-1615. Removal of Improvements.

- A. If the City incurs any costs in removing any equipment or improvements from a sidewalk sale for the following reasons: the establishment failed to remove equipment at the close of the business day, the establishment went out of business or the establishment failed to renew its license, within 30 days of the close of the year, the City shall remove and store all equipment and bill the property owner for the actual costs of labor, materials, equipment or any other item, service or expense incurred by the City to correct such violation, plus any additional administrative fees. The equipment removed shall remain in the City's possession until the bill from removal and any fines or fees are paid in full.
- B. Any bill for such removal of equipment undertaken pursuant to this chapter shall be billed to and paid by the property owner within 60 days. Upon failure of the property owner to pay the amounts due within 60 days, the City shall assess this uncollected debt on the property taxes of this building.

§10-1616. Permit Renewal.

A sidewalk sale permit may be renewed annually, upon review of the renewal application and complaint history, if any, which shall be provided by the Codes Enforcement Office, Reading Police Department, Department of Public Works, and Department of Fire and Rescue Services. Each agency shall provide to the Codes Enforcement Office copies of any inspection results, complaints filed and citations issued concerning the sidewalk sale under consideration. The renewal fee for the permit shall be as stipulated in §10-1606 above.

§10-1617. Written Notice of Violations; Suspension of Permit.

Upon finding by the Codes Enforcement Office that an applicant has violated any provisions of this article, the Codes Enforcement Office shall give written notice to the applicant to correct said operational violation. Upon failure to correct said operational violation within the time frame specified, the Codes Enforcement Office may take appropriate action, as necessary, to maintain the Pedestrian Walkway. The Codes Enforcement Office may suspend the applicant's permit issued pursuant to this article, as well as pursue prosecution in accordance with the requirements herein. The Codes Enforcement Office shall, in his/her sole judgment, give a violator reasonable time to repair any structural damage or physical violation of any provision of this article. An appeal before City Council shall be accorded if requested.

§10-1618. Violations and penalties; effect on eligibility for license.

- A. Whoever violates any provisions of this article shall, upon conviction thereof in a summary proceeding, be fined not less than \$200 and not more than \$1,000 for each offense, to be

- collected as other fines and costs are by law collectible, or imprisoned for not more than 90 days, or both. Each day during which a violation occurs shall constitute a separate offense.
- B. Any person who is convicted of a violation of any of the provisions of this article shall have his license suspended for one full year and shall not be eligible for another license until the expiration of one full year.
 - C. Any person who fails to remove a sidewalk sales materials at the close of each business day, as provided for in §10-1615, shall not be eligible for a license in any following year.
 - D. Failure to observe any of the conditions set out herein is grounds for revocation of a license. Prior to such revocation, the Codes Enforcement Office shall give 10 days' written notice to the licensee of his violation of or his failure to observe a general condition as set out above. If the licensee requests a hearing prior to the expiration of that ten-day notice period, the City Council shall hold a hearing to determine if the license should be revoked. The licensee may present evidence in his own behalf if he so desires. The decision in regard to revocation may be appealed to the City Council. If the licensee fails to request such a hearing, the revocation shall become effective upon the expiration of the ten-day notice period. If a license granted under this section is revoked, all tables, chairs and other appurtenances used as a part of the sidewalk sale shall be immediately removed from the sidewalk.
 - E. This article and the foregoing penalties shall not be construed to limit or deny the right of the City or any person to such equitable or other remedies as may otherwise be available with or without process of law.

§10-1619. Determination on Application.

The Codes Enforcement Office shall grant or deny an application for a permit pursuant to this article within seven days of its complete submission.

§10-1620. Reservation of Rights.

Neither the adoption of this article nor the granting of any license pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the City of Reading with respect to streets and sidewalks, whether express or implied.

§10-1621. Penalties for Offenses

Any person who shall violate any of the provisions of this article shall be liable to prosecution and shall, upon conviction thereof, be liable to a fine that shall not exceed \$1000, imprisonment for not more than 15 days, or both such fine and imprisonment.